but in that case it was expressly stated that no question of fraud was involved, and accordingly it can lend them no support. Such a view, indeed, would seem to be an unreasonable restriction upon the Federal courts,[9] since it would result in preventing the determination of the ultimate issue of fraudulent joinder[10] simply because it entails an enquiry, to a certain extent, into the merits, and furthermore since it would apparently nullify every safeguard of the right of removal. There would be nothing to prevent a plaintiff from alleging in his complaint facts which, though he may know them to be false, would present a jury case, thus very simply obstructing a removal. On the other hand, if the petitioner by stating specific facts may take the question of fraud to trial in the Federal court, after its determination there, the case, whether retained or remanded, will ultimately be tried in the proper tribunal, and neither the State nor the Federal courts will stand in danger of being defrauded of their jurisdiction at the pleasure of unscrupulous litigants.

LIS PENDENS AS APPLIED TO PERSONAL PROPERTY.—The sole purpose of the doctrine of *lis pendens* is to prevent frustration of the decree of the court by alienation of the property in litigation,[1] and this purpose is accomplished by enforcing the decree against all persons who have acquired an interest *pendente lite* in the same manner as though they had been parties to the suit.[2] In England the position has been squarely taken that this rule does not apply to personal property,[3] but in America the contrary view has generally prevailed.[4] The only theory upon which it has ever been sought to justify this discrimination is that in suits involving chattels, judgment is in the alternative for the return of the chattel or the payment of its value, at the defendant's option, so that the judgment cannot be defeated by an alienation of the subject-matter.[5] It is evident, however, that this theory is limited to legal actions, in which alone the judgment is of that character, and in such actions the doctrine of *lis pendens* is of comparatively small importance.[6] Obviously it can never affect the substantive rights of the parties, for ultimately the

[9]Shepherd *v.* Bradstreet (1895) 142 Fed. 142; see McGuire *v.* Great Northern Ry. Co. (1907) 153 Fed. 434; Prince *v.* Illinois Central Ry. Co. (1899) 98 Fed. 1; St. Louis etc. Ry. Co. *v.* Adams (1908) 87 Ark. 136.

[10]Gustafson *v.* Chicago etc. Ry. Co. (1904) 128 Fed. 85.

[1]See Bellamy *v.* Sabine (1857) 1 De G. & J. *566; 7 COLUMBIA LAW REVIEW 282.

[2]See Norris *v.* Ile (1894) 152 Ill. 190, 199.

[3]Wigram *v.* Buckley (1894) L. R. 3 Ch. 483; 38 Sol. Journ. 677; 16 Harv. L. Rev. 225.

[4]Reid *v.* Sheffy (1897) 75 Ill. App. 136; *contra,* Calkins *v.* First Nat. Bank (1906) 20 S. D. 466. The view that articles of ordinary commerce do not fall within the doctrine of *lis pendens,* a rule well established in the case of negotiable paper, seems to have originated in the dictum of Chancellor Kent in Murray *v.* Lylburn (N. Y. 1817) 2 Johns. Ch. 441, 444. While his statement has been frequently quoted with approval, it is believed that in no case have such articles actually been excluded upon that ground. The difficulty of drawing a line is obvious.

[5]Wigram *v.* Buckley *supra;* Calkins *v.* First Nat. Bank *supra.*

[6]2 Pomeroy, Eq. Jur., (3rd ed.) §§ 633, 636; see Burnham *v.* Smith (1899) 82 Mo. App. 35, 46; Sheridan *v.* Andrews (1872) 49 N. Y. 478, 482.

title of a successful plaintiff is as good against an alienee of the defendant as against the defendant himself, not because the alienee took *pendente lite,* but because he took only the rights of the defendant, which were defined in the judgment. The usefulness of the rule of *lis pendens* in such cases consists simply in affording the plaintiff a summary method of asserting his rights against alienees, by enforcing the judgment against such persons without the necessity of a new action.[7] Where, on the other hand, equitable interests are involved, the rule may in addition substantially change the rights of the parties. Thus, in order to protect a decree for specific performance, the rule may incidentally charge with notice innocent purchasers who would otherwise take free from the plaintiff's equity.[8] Accordingly, while *lis pendens* is a rule both of law and of equity, it is most often invoked in the chancery courts; and while it is founded on the necessity of keeping the *res* before the court, it is chiefly important as involving a phase of the doctrine of notice. And though as to chattels it is seldom given effect, because judgments do not commonly bind personal property specifically, it would seem that the rule should be applied to realty and personalty alike when necessary to effectuate a decree. The true test, it is submitted, is not the character of the property, but the nature of the decree.[9]

It is evident, furthermore, that the practical convenience of a purchaser's being bound by *lis pendens,* to prevent the destruction of decrees and judgments, is the same whether the property is situated within or without the jurisdiction.[10] The "Full Faith and Credit clause," however, does not by the better view[11] constitute the courts of any State instruments for the summary enforcement of a foreign judgment, and accordingly each State may determine for itself, on doctrines of comity, how far it will give extraterritorial effect to the rule of *lis pendens.* There is no reason, then, why the foreign purchaser of property *pendente lite* must search records *ad infinitum* for suits affecting the *res;* but on the other hand, it seems only reasonable that he should be bound by judgments obtained where the property is situated,[12] for it could be no excessive hardship to require a search of the records in that particular jurisdiction.

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[7]Bradley *v.* McDaniel (N. C. 1855) 3 Jones L. 128; Huerstal *v.* Muir (1884) 64 Cal. 450.

[8]Snowman *v.* Harford (1869) 57 Me. 397. The doctrine of *lis pendens* may also, in a proper case, be invoked in favor of the defendant. 7 COLUMBIA LAW REVIEW 282.

[9]"Now the doctrine of *lis pendens* applies not to every suit, but to a suit the object of which is to recover or to reassert title to specific property; and I cannot conceive for this purpose any distinction between an action to recover land or to recover property which according to law or equity can be though personal estate specifically recovered." Chitty, J., in Wigram *v.* Buckley *supra,* 486. This decision, however, was reversed on appeal. And see especially his comment there upon Berry *v.* Gibbons (1873) L. R. 8 Ch. App. 747.

[10]It seems that as to property outside of the jurisdiction the *lis pendens* doctrine can apply only in equity cases, owing to the fact that in legal actions involving the legal ownership of chatttels, it has no application, and that legal suits affecting the title to land must be brought where the land is located.

[11]Shelton *v.* Johnson (Tenn. 1857) 4 Sneed 672; *contra,* Fletcher *v.* Ferrel (Ky. 1840) 9 Dana 372.

[12]Since chattels ordinarily bear no evidence of their original *situs,* a search of the records of their *situs* at the time of purchase seems all that could reasonably be demanded.

The application of the *lis pendens* doctrine to personalty temporarily beyond the jurisdiction was before the court in the late case of *North Carolina Land Co.* v. *Boyer* (C. C. A. 6th Cir. 1911) 191 Fed. 552. The plaintiff had brought suit in North Carolina to foreclose a chattel mortgage upon rolling stock, and, pending the suit, a locomotive was attached, while in Tennessee, by creditors of the mortgagor. In an action of replevin it was held that the attachment, under the doctrine of *lis pendens,* was subject to the determination of the foreclosure suit in the plaintiff's favor. Since the locomotive, being absent only temporarily, retained its *situs* in North Carolina, the defendant was held to no unreasonable standard of diligence in being charged with constructive notice of the *lis pendens* in the particular jurisdiction of the *situs,* especially since the very character of the property was notice of its permanent location. It is submitted, however, that if the *situs* had actually been changed, a result which, in the case of ordinary chattels, would usually follow under the circumstances of the principal case, the doctrine should not have been applied.[13]

THE ELEMENT OF INTENTION IN ADVERSE POSSESSION.—In spite of the signification of the American Term "Adverse Possession"[1] it is well settled that the owner of land may lose his title under the Statute of Limitations even though for a part or all of the statutory period the land has been in the actual possession of one whose claim was for another and not adverse to all the world. In the cases of occupation by tenants for years,[2] for example, this result is easily reached on the theory that the adverse claimant holds by another person in possession, whose intention is to claim the fee, though not for himself, yet for his landlord. The same principle may be applied under the circumstances of the recent case of *Andrews* v. *Rio Grande Co.* (N. M. 1911) 120 Pac. 311, where it was held that a trustee might hold adversely through the possession of his *cestui.*[3] In all such cases, if the actual occupant has held for the full period of limitations, it seems that the understanding of the parties must determine whether the landlord or the tenant in possession shall become owner of the land. It should be borne in mind, however, that the evidence of the tenant's intent to hold for his own benefit, and repudiate his relation as such, must be of a very convincing character, since it is familiar law that such a legal wrong will not ordinarily be presumed.[4]

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[13]The decision was also properly rested upon the additional ground that the mortgagor had no leviable interest in the property.

[1]See 10 COLUMBIA LAW REVIEW 761.

[2]Elliott *v.* Dycke (1884) 78 Ala. 151; Coyle *v.* Franklin (1893) 54 Fed. 644; Whitmore *v.* Humphries (1871) 41 L. J. C. P. 43. The same result is reached where the actual possession is in an agent, Whitehead *v.* Foley (1866) 28 Tex. 1, a mortgagor, *cf.* Parker *v.* Banks (1878) 79 N. C. 480, or a co-tenant. *Cf.* Unger *v.* Mooney (1883) 63 Cal. 586.

[3]The *cestui* is often called the tenant at will of the trustee, Lewin, Trusts, (12th ed.) 1130 and his possession is the possession of the trustee, Adams *v.* Burke (1875) 3 Sawy. 415; Hill, Trustees, (2nd Am. ed.) 266; Rogers *v.* White (Tenn. 1853) 1 Sneed 68; Marr *v.* Gilliam (Tenn. 1860) 1 Coldw. 488, to such a degree that the trustee is a proper plaintiff in a possessory action. Barker *v.* Furlong (1891) L. R. 2 Ch. 172.

[4]2 COLUMBIA LAW REVIEW 52; Bigelow, Estoppel, (3rd ed.) 393; Angell, Lim. of Actions, (6th ed.) 451.